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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,890	09/27/2005	Heinz Focke	Q90107	3733
23373 7590 12/09/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER DEMEREE, CHRISTOPHER R				
ART UNIT		PAPER NUMBER		
3782				
NOTIFICATION DATE		DELIVERY MODE		
12/09/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/550,890

Applicant(s)

FOCKE ET AL.

Examiner

CHRISTOPHER DEMEREE

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-15 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-15 and 18-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 12-15 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Focke et al. (US 2002/0179464 A1; hereinafter Focke) in view of Bohdan (US 6832677 B2).

Regarding claims 18-20, Focke teaches a hinge-lid box for cigarettes or the like comprising a box part with box front wall (12), box rear wall (13), box side walls (14 and 15) and base wall (16), and a lid (11) which is pivotably attached to the box part and which comprises lid front wall (17), lid rear wall (18), lid side walls (20) and end wall (21), characterized by the following features; the hinge-lid pack with box part and lid is configured as having an octagonal cross-section across its entire dimensions (see Figure 5; Examiner considers the container to have eight distinct sides), a lateral region facing the box side walls and lid side walls is configured as having a cross-section that is trapezoid in shape (see Fig. 5; Examiner considers the end portions to have a trapezoidal cross sectional shape due to the three distinct sides), with converging material strips, namely legs (65 and 66), connected respectively to the box front wall, box rear wall and to the lid front wall and lid rear wall (see Fig. 6). Focke also teaches a collar made from a separate blank (see Fig. 7) conforming to the contour of the cross

section of the container comprising marginal material strips (37 and 38) which abut the inner side of the rear box legs and lid legs (Col 4 lines 39-50).

Focke lacks teaching that said material strips or legs are directed at an angle of approximately 30 degrees to the box front wall and approximately 60 degrees to the transverse box side wall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the material strips or legs to be directed at an angle of 30 degrees to the front wall and 60 degrees to the side wall, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Focke, as modified above, discloses the claimed invention except for the cigarettes configured within the pack in its marginal region - in the region of the trapezoid-shaped cross section - a marginal transverse row with two adjacent cigarettes and a transverse row arranged adjacent thereto with three adjacent cigarettes, with the cigarettes of the transverse row preferably assuming a saddle position with respect to the cigarettes of the transverse row. Bohdan teaches a cigarette channeling device wherein cigarettes are placed within a package in a 2-3-2 configuration substantially similar to that of the instant application. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Focke's cigarette configuration in order to maximize the packing space within the package using Bohdan's channeling device (Bohdan; Col 2 lines 3-12). Examiner notes that with the modifications as described above that the leg strips would have a diameter greater than

the diameter of one cigarette yet less than the aggregate diameter of two adjacent cigarettes.

Regarding claim 12, Focke, as modified above, teaches a container characterized in that the width of the side walls comprised of two overlapping side tabs (22-25) is somewhat less than the dimensions of two adjacent cigarettes, in particular of the marginal first transverse row.

Regarding claims 13 and 14, Focke, as modified above, teaches a container characterized by the angulations (47 and 48) formed as rounded corners, namely with a circular-shaped rounding formed by curvature strips (see Fig. 3), specifically by conforming to the contour and dimension of the cigarettes lying opposite the angulations.

Regarding claim 15, Focke, as modified above, teaches a container characterized in that base corner tabs (30) and lid corner tabs (31) are arranged as the continuation of interior box side tabs and lid side tabs (see Fig. 6), respectively, with the corner tabs being adapted to the contour of the base wall and end wall by means of corresponding exposed tab edges, or corresponding in their transverse dimensions to the width of their assigned side tabs.

Response to Arguments

3. Applicant's arguments filed 9/4/2009 have been fully considered but they are not persuasive. Applicant argues that the prior art fails to meet the limitations of the claimed invention:

(1) Applicant contends that no support exists for modifying the shape (i.e. dimensions) of Focke's hinge lid pack of octagonal shape.

-Examiner notes that the claims drawn to the dimensions of the instant invention state that said dimensions are "approximate", therefore inferring a range. Examiner maintains that it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the material strips or legs to be directed at an angle of 30 degrees to the front wall and 60 degrees to the side wall, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

(2) Applicant contends that no support exists for modifying Focke in view of Bohdan. Furthermore, Applicant argues that Bohdan fails to "show any deliberate and effective coordination in the design of cigarette formation and pack contour".

-Examiner notes that it is old and well known in the art to change up the configurations of the contents of a container. Bohdan teaches the same configuration claimed in the instant application. The motivation to modify Focke's configuration lies in the fact that Bohdan teaches that his configuration maximizes the packing space within a non-rectangular cross-section of the package (Bohdan; Col 2 lines 3-12). Furthermore, Examiner considers Figure 6 of the Bohdan patent to indeed deliberately exhibit coordination between the cigarettes and the contour of an outer wall 60 (i.e. pack contour).

(3) Applicant contends that Focke does not teach "lid legs".

-Examiner notes that although Focke does not explicitly teach "lid legs", Focke does indeed disclose elements that are functional equivalents to the claimed elements of the instant invention. Specifically, Focke does indeed teach a collar made from a separate blank, positioned within an upper part of the outer box (see Par. 0037).

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER DEMEREE whose telephone number is (571)270-1982. The examiner can normally be reached on Mon-Fri, 8:00 AM-5:00PM, Alt Fri, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Demeree/
Examiner, Art Unit 3782

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782